United Nations A/71/317

General Assembly

Distr.: General
9 August 2016

Original: English

Seventy-first session
Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Cultural rights

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report prepared by the Special Rapporteur in the field of cultural rights, Karima Bennoune, submitted in accordance with Human Rights Council resolution 28/9.

* A/71/150.

16-13742 (E) 240816

Please recycle

Report of the Special Rapporteur in the field of cultural rights

Summary

In the present report, the Special Rapporteur in the field of cultural rights sets out a human rights approach, which she has developed, to the intentional destruction of cultural heritage, in conflict and non-conflict situations, by States and non-State actors. She examines the impact of such destruction on a range of human rights, including the right to take part in cultural life; calls for effective national and international strategies for preventing, and holding accountable those alleged to have taken part in, such destruction; and also calls for support for and protection of defenders of cultural heritage.

Contents

		Page
I.	Introduction	3
II.	The human rights meaning of "cultural heritage"	4
III.	The international legal framework	6
IV.	Intentional destruction of cultural heritage: cultural warfare, "cultural cleansing" and other violations of cultural rights	10
	A. Intentional destruction as a form of cultural warfare and cultural cleansing	10
	B. Intentional destruction in armed conflict	14
V.	A human rights approach to the intentional destruction of cultural heritage	15
	A. The importance of a human rights approach	15
	B. A human rights approach to cultural heritage in armed conflict or situations of occupation	16
	C. Defenders of cultural heritage	19
VI.	Conclusions and recommendations	21

I. Introduction

1. The present report, prepared by the Special Rapporteur in the field of cultural rights, Karima Bennoune, in accordance with Human Rights Council resolution 28/9, is her first submission to the General Assembly since she began her work in November 2015. The report addresses the intentional destruction of cultural heritage, an issue explored in her first report to the Human Rights Council (A/HRC/31/59).

2. In an important cross-regional joint statement on cultural rights and the protection of cultural heritage, delivered by the Permanent Representative of Cyprus at the thirty-first session of the Human Rights Council and supported by 146 States, the focus of the Special Rapporteur on the destruction of cultural heritage and its impact on cultural rights was welcomed and States were called upon "to offer their full support to the Special Rapporteur in undertaking ... activities under her mandate".[1] All acts of intentional destruction to cultural heritage occurring most commonly during, or in the aftermath of, armed conflicts around the world were condemned and alarm was expressed at their increasing frequency and scale. States called for specific action: a refraining from any military use or targeting of cultural property, in full respect of obligations under international humanitarian law; enhanced global cooperation in preventing and combating the looting, smuggling and illicit trafficking in cultural objects which violate or abuse cultural rights and which, in some current instances, generate funds for the financing of terrorism; cooperation in restoring looted or trafficked cultural properties to their place of origin; raising awareness of the relationships between cultural heritage and human rights and of the risks faced by defenders of cultural heritage; and enhanced cooperation among United Nations bodies to strengthen implementation of the international legal framework.

3. The Special Rapporteur engaged in consultations with experts in preparation for the writing of this report. She convened a meeting of experts on 13 and 14 June 2016 in Geneva, took part in a meeting of the Conflict Culture Research Network at the Smithsonian Institution in Washington, D.C., on 24 June and participated in an expert meeting hosted by the UK Committee of the Blue Shield in London on 14 July. She also attended the fifteenth session of the Permanent Forum on Indigenous Issues in May. Through participation in those meetings, she was able to interact with experts on and defenders of cultural heritage, States, current and former military personnel, civil society and humanitarian workers from many regions of the world.

4. The Special Rapporteur also called for contributions to this report and is gratified at having received 68 submissions, from States, academics, national human rights institutions and civil society within various regions of the world. These inputs have greatly enriched her work.[2]

5. Recent highly visible and openly declared acts of intentional destruction of cultural heritage, spread across multiple regions of the world, require urgent response. In that regard, the Special Rapporteur was reminded by representatives of indigenous peoples that, unfortunately, many other acts of cultural heritage

[1] www.ohchr.org/Documents/Issues/CulturalRights/JointStatementCyprus21Mar2016.pdf.

[2] Submissions are available at www.ohchr.org/EN/Issues/CulturalRights/Pages/IntentionalDestruction.aspx.

destruction go unnoticed.[3] Given that destruction of cultural heritage is most often irreversible, even in this digital age, we must come together to prevent and stop, as a matter of priority, such deliberate attacks on cultural rights and the culture of humanity.

II. The human rights meaning of "cultural heritage"

6. Cultural heritage is significant in the present, both as a message from the past and as a pathway to the future. Viewed from a human rights perspective, it is important not only in itself, but also in relation to its human dimension, in particular its significance for individuals and communities and their identity and development processes (see A/HRC/17/38 and Corr.1, para. 77). Cultural heritage is to be understood as encompassing the resources enabling the cultural identification and development processes of individuals and groups, which they, implicitly or explicitly, wish to transmit to future generations (ibid., paras. 4-5). It is critical to emphasize the connections between culture more broadly and cultural heritage, and to recognize cultural heritage as living and in an organic relationship with human beings. This encourages its preservation and discourages its destruction. The Special Rapporteur notes the holistic approach to examining the interconnections between tangible and intangible cultural heritage taken by many experts. Attacks on one form of heritage are often accompanied by assaults on the other. She intends to illustrate those interconnections in this report, while noting the particular logistical aspects of the destruction and preservation of tangible cultural heritage due to its physical manifestations and the particular legal standards that pertain thereto.

7. As argued in many submissions received by the Special Rapporteur, including those of a number of States, because the tangible and intangible dimensions of cultural heritage are closely interconnected, destruction of the tangible is linked to destruction of the intangible, such as religious and cultural practices related to cultural sites and objects. This impedes its transmission to future generations.[4] For example, ancient languages and religious practices tied to sacred spaces and structures and cultural landscapes of northern Iraq and the Syrian Arab Republic are being lost as populations are displaced and objects, texts and historic structures are destroyed. Combined attacks on cultural heritage and people and their cultural rights spread terror, fear and despair.[5]

8. While specific aspects of heritage may have particular resonance for and connections to particular human groups (see A/HRC/17/38 and Corr.1, para. 62), damage to any cultural property damages the cultural heritage of all humankind, since each people makes its contribution to the culture of the world. For example, "the destruction of tombs of ancient Muslim saints in Timbuktu, a common heritage of humanity, is a loss for us all, but for the local population it also means the denial of their identity, their beliefs, their history and their dignity".[6] As Judge Cançado

[3] See the submission of Cultural Survival which asserts "daily" occurrence of such violations.

[4] See, inter alia, the submissions of the Dominican Republic, El Salvador, Greece, Guatemala, the Philippines, the Organization of Islamic Cooperation, and Maider Maraña.

[5] Submission of Patrice Meyer-Bisch.

[6] Office of the United Nations High Commissioner for Human Rights, "'A very dark future for the local populations in Northern Mali', warn UN experts", 10 July 2012. See also the submissions of Belgium and Mauritius.

Trindade explained in his opinion related to the 2011 order of the International Court of Justice regarding the case of the Temple of Preah Vihear, "the ultimate titulaires of the right to the safeguard and preservation of their cultural and spiritual heritage are the collectivities of human beings concerned, or else humankind as a whole".[7]

9. Hence, the Special Rapporteur regrets that the discourses on cultural heritage are selective: the parties to discourse exclude the losses of others and the destructive acts engaged in by their own side and fail to recognize the cultural rights of all. Cultural heritage is not a weapon: it is an issue concerning universal human rights. We must come together to defend the heritage of all, for all.

10. The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict defines "cultural property" broadly so as to include movable or immovable property, such as monuments of architecture, art or history, artworks, archaeological sites, manuscripts, books and scientific collections, as well as the institutions that house them (article 1). Cultural heritage is a broader concept which does not rest upon one agreed definition: it includes tangible heritage composed of sites, structures and remains of archaeological, historical, religious, cultural or aesthetic value, as well as intangible heritage comprising traditions, customs and practices, vernacular or other languages, forms of artistic expression and folklore. Both concepts should be understood in broad, holistic terms. For example, tangible heritage includes not only buildings and ruins, but also archives, manuscripts and libraries, which are critical to preserving all facets of cultural life, such as education, as well as artistic and scientific knowledge and freedom.

11. It is difficult to obtain information on women's experience of cultural heritage and its destruction because many organizations engaged in work on heritage do not approach it from a gendered perspective, and many women defenders of human rights do not engage in such work. Here lies a gap that must be bridged. The Special Rapporteur regrets that she did not receive any submissions focused on this topic. The fact that many cultural sites that have been destroyed recently, such as mausoleums, are associated with and visited by women in particular, may be a factor in their targeting. Moreover, intangible heritage plays a particularly important role in the enjoyment of human rights by many women and girls. The Special Rapporteur encourages the development and adoption of a fully gender-sensitive approach to the protection of cultural heritage and to the combating of its destruction, which should include: recognizing the work of women cultural heritage defenders, who may face not only the risks encountered by their male colleagues but also gender discrimination; promoting the inclusion of women cultural heritage experts in relevant national and international forums and institutions, including at the highest levels; and combating the particular challenges faced by women in accessing cultural heritage without discrimination and even in ensuring that their heritage is recognized in the first place.

12. Culture is constituted by social practices that change over time (A/HRC/31/59). Sometimes, cultural change is mandated by human rights law when practices violate human rights, as required, for example, under article 5 (a) of the Convention on the Elimination of All Forms of Discrimination against Women.

[7] Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (*Cambodia v. Thailand*), Separate Opinion of Judge Cançado Trindade, *I.C.J. Reports 2013*, p. 606, para. 114.

While cultural diversity is to be celebrated, cultural rights, being firmly embedded in the universal human rights framework, cannot be invoked to excuse human rights violations, discrimination or violence. Cultural rights include the right to cultural syncretism: human history demonstrates that cultures are often mixed and are not fixed in time. In challenging intentional destruction of cultural heritage, the Special Rapporteur opposes the application of coercion, violence and discrimination to impose cultural change in violation of human rights.

13. Much of what we consider heritage is the result of continuous recreation throughout history, with each layer adding to its meaning and value. As stressed many times by the former Special Rapporteur, the mandate on cultural rights has been established to protect not culture and cultural heritage per se, but rather the conditions allowing all people, without discrimination, to access, participate in and contribute to cultural life through a process of continuous development. These conditions are greatly jeopardized when cultural heritage is at risk or destroyed. Therefore, prima facie, destruction of cultural heritage must be considered a violation of cultural rights. However, there may be cases where monuments celebrate the memory of past human rights violations, or promote ideas, concepts or actions that are no longer acceptable, such as violence and discrimination (A/HRC/25/49). The fate of such monuments should be addressed within the human rights framework, in particular within the context of the standards pertaining to limitations on cultural rights (general comment No. 21 of the Committee on Economic, Social and Cultural Rights, para. 19; A/HRC/14/36, para. 35). To these conditions should be added the imperative to conduct in-depth consultation, including on the diversity of interpretations of the heritage, alternatives to its destruction and the means of memorializing it.

III. The international legal framework

14. The right of access to and enjoyment of all forms of cultural heritage is guaranteed by international human rights law, including the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, deriving its legal basis, in particular, from the right to take part in cultural life, the right of members of minorities to enjoy their own culture and the right of indigenous peoples to self-determination and to maintain, control, protect and develop cultural heritage. Other human rights must also be taken into consideration, in particular the rights to freedom of expression, freedom of thought, conscience and religion, the right to education, the economic rights of the many people who earn a living through tourism related to such heritage and the right to development. The right of access to and enjoyment of cultural heritage includes the right of individuals and collectivities to, inter alia, know, understand, enter, visit, make use of, maintain, exchange elements of and develop cultural heritage, as well as to benefit from the cultural heritage and the creation of others. It also includes the right to participate in the identification, interpretation and development of cultural heritage, as well as in the design and implementation of preservation and safeguard policies and programmes (see A/HRC/17/38 and Corr.1, paras. 78-79).

15. The Committee on Economic, Social and Cultural Rights has explained that States' obligations to respect and protect freedoms, cultural heritage and diversity are interconnected and the obligation to ensure the right to participate in cultural life

under article 15 of the International Covenant on Economic, Social and Cultural Rights includes the obligation to respect and protect cultural heritage (general comment No. 21, para. 50). In its resolution 6/1 on the protection of cultural rights and property in situations of armed conflict, the Human Rights Council reaffirmed that the destruction of or any other form of damage to cultural property may impair the enjoyment of cultural rights, in particular under article 15 of the International Covenant on Economic, Social and Cultural Rights.

16. Numerous other international instruments protect cultural heritage. Although not all of them take a human rights approach to cultural heritage, a shift in focus has occurred in recent years, from the preservation and safeguard of cultural heritage as such to the protection of cultural heritage as being of crucial value for human beings in relation to their cultural identity. Notable in this regard are the Convention Concerning the Protection of the World Cultural and Natural Heritage (1972), the Convention on the Protection of the Underwater Cultural Heritage (2001) and the Convention for the Safeguarding of the Intangible Cultural Heritage (2003).

17. A specific protection regime governs the protection of cultural heritage in times of armed conflict. Core standards include the Hague Conventions of 1899 and 1907, the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977, the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and the 1954 and 1999 Protocols thereto and the Rome Statute of the International Criminal Court (1998). Besides these various treaties, a body of customary international humanitarian law protects cultural heritage in armed conflict and "(m)any of the relevant conventional rules, if not declaratory of custom when agreed, have come to reflect it in the period since, while others must now be interpreted in the light of later custom".[8]

18. The 1954 Hague Convention requires States parties to respect cultural property and refrain from any act of hostility directed against it or any use of it likely to expose it to such acts, subject only to imperative military necessity (article 4). This provision also requires States to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property.

19. In addition, under article 3, the 1954 Hague Convention requires that States prepare in peacetime for protection of heritage in conflict. In accordance with article 28, parties must prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order a breach of the Convention. The Second Protocol to the Convention strengthens this provision by requiring the codification of a criminal offence, including extension of responsibility to higher command (article 15 (2)).

20. In light of concerns about the ongoing attacks on cultural property following the entry into force of the Convention and the First Protocol, the Second Protocol was developed to enhance protection. It narrows the application of the "military necessity" waiver to those cases where "no feasible alternative (is) available to obtain a similar military advantage" and it imposes standards of proportionality to prevent or minimize collateral damage.

[8] Roger O'Keefe, "Protection of cultural property", in *The Oxford Handbook of International Law in Armed Conflict*, Andrew Clapham and others, eds. (Oxford, Oxford University Press, 2014), p. 498.

21. The Special Rapporteur notes with concern that many States have not adhered to these standards, in particular the Second Protocol, to which there are only 68 parties. However, she was pleased to learn of the commitment that has been made for the first time by a permanent member of the Security Council, namely, the United Kingdom of Great Britain and Northern Ireland, to ratify the Second Protocol (and implement it in this case through the Cultural Property (Armed Conflicts) Bill), and looks forward to the achievement of that important step. She calls upon all permanent members of the Council to follow suit in the next two years so as to demonstrate collective leadership on this critical issue.

22. Moreover, States have not always enacted adequate implementing legislation to fulfil their obligations under the treaties that they have ratified, for example, with respect to prosecuting or imposing penal or disciplinary sanctions upon those responsible for attacks against cultural heritage. Yet, "the proper national implementation of the Hague Convention is a *condicio sine qua non* for the effective respect for cultural property in the event of armed conflict".[9]

23. The Special Rapporteur recalls that many provisions of the 1954 Hague Convention rise to the level of customary international law,[10] binding both States not party to the Convention and non-State actors. She concurs with experts that "the prohibition of acts of deliberate destruction of cultural heritage of major value for humanity" rises to the level of customary international law and is a norm which is supported by "a general opinio juris".[11]

24. In the United Nations Educational, Scientific and Cultural Organization (UNESCO) Declaration concerning the Intentional Destruction of Cultural Heritage, adopted in 2003, the international community reaffirms its commitment to fight against the intentional destruction of cultural heritage in any form so that it may be transmitted to the succeeding generations. States are unequivocally instructed to prevent, avoid, stop and suppress intentional destruction, wherever such heritage is located.

25. Importantly, many provisions of international law relate to the role of non-State actors, such as article 19 of the 1954 Hague Convention, which applies to non-international conflicts, as well as article 8 of the Rome Statute of the International Criminal Court and article 16 of Additional Protocol II to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts. The last-mentioned prohibits any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and applies to both State and non-State actors within the context of non-international armed conflicts. The Special Rapporteur believes that attention must also be paid to robust use of these standards — and developing other strategies — for holding non-State actors to account and preventing their engagement in destruction.

---

[9] Jan Hladik, "The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict: some observations on the implementation at the national level", *MUSEUM International*, No. 228: Protection and Restitution (vol. 57, No. 4 (December 2005)), sect. IV, p. 7.

[10] Francesco Francioni and Federico Lanzerini, "The destruction of the Buddhas of Bamiyan and international law", *European Journal of International Law*, vol. 14, No. 44 (2003), p. 619.

[11] Ibid., p. 635.

26. Individual criminal responsibility arises from serious offences against cultural heritage.[12] Under the Rome Statute, intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments and hospitals, provided they are not military objectives, in either international or non-international armed conflict, may be tried as a war crime.[13]

27. In addition, the destruction of cultural property with discriminatory intent can be charged as a crime against humanity and the intentional destruction of cultural and religious property and symbols can also be considered evidence of intent to destroy a group within the meaning of the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter referred to as the Genocide Convention) (A/HRC/17/38 and Corr.1, para. 18). In 2014, the Office on Genocide Prevention and Responsibility to Protect developed a new "Framework of analysis for atrocity crimes: a tool for prevention" to assess the risk of genocide, war crimes and crimes against humanity, in which destruction of property of cultural and religious significance is considered a significant indicator within the context of prevention of atrocity crimes.

28. The Genocide Convention as originally drafted included clauses related to vandalism. Rafael Lemkin, whose conceptualization underpins the Convention, directly linked "barbarity", conceived as "the premeditated destruction of national, racial, religious and social collectivities", with "vandalism", the "destruction of works of art and culture being the expression of the particular genius of these collectivities". A group could be annihilated if its identity, its collective memory, has been erased, even if many of its individual members remain alive. "It takes centuries, sometimes thousands of years to create a ... culture," Lemkin wrote, "but genocide can destroy a culture instantly".[14] However, as finalized, the Convention did not include the cultural aspects. The significance of Lemkin's concept of cultural genocide lies in its direct linkage of cultural heritage and human rights.[15]

29. The concept of cultural genocide should be given serious consideration, "perhaps not to explicitly incorporate it as a form of genocide, but ... to modify the existing barriers to effective deterrence to the destruction of cultural heritage".[16] It bears remembering that the Genocide Convention incorporates as genocide acts "committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group" including "(d)eliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part". The idea is not to "set 'cultural genocide' on a par with systematic mass murder" or "dilute (its) unique nature ... as 'the gravest and greatest of crimes against humanity'", but rather to recognize "that the task of destroying a group" also aims at destroying "identity as expressed through language, customs, art and ... architecture".[17] Within a broader context of genocide, as Patty Gerstenblith has written, destruction of cultural heritage becomes an act of genocide, as well as evidence of genocidal

[12] See, e.g., the statute of the International Tribunal for the Former Yugoslavia, article 3 (d).

[13] Rome Statue of the International Criminal Court, article 8 (2) (b) (ix) and (e) (iv).

[14] Rafael Lemkin, as cited in Robert Bevan, *The Destruction of Memory: Architecture at War* (London, Reaktion Books, 2006), p. 271.

[15] Bevan, *The Destruction of Memory*, pp. 270-271.

[16] Patty Gerstenblith, "The destruction of cultural heritage: a crime against property or a crime against people?", *John Marshall Review of Intellectual Property Law*, vol. 15, No. 336 (31 May 2016), p. 344.

[17] Bevan, *The Destruction of Memory*, p. 270.

intent. This is especially the case, as has been noted in regard to Nazi practices and those of Da'esh, when destruction and related looting of cultural heritage is carried out to fund the further commission of atrocities rising to the level of genocide. A number of submissions to the Special Rapporteur specifically referred to the term *cultural genocide*.

30. Following the adoption of Security Council resolution 2199 (2015), UNESCO developed a strategy to strengthen its capacity to respond urgently to cultural emergencies. The strategy explicitly refers to human rights and cultural rights and develops actions to be taken to reduce the vulnerability of cultural heritage before, during and after conflict. It includes rehabilitation of cultural heritage as an important cultural dimension, which can strengthen intercultural dialogue, humanitarian action, security strategies and peacebuilding.[18]

31. The obligation to stop looting must be viewed as a collective one which includes not only the States where looting takes place but also those powerful countries that offer the lucrative markets for looted objects. If they do not reduce market demand, there will be further incentive for looting and for intentional destruction, and more funding for groups engaging in it.

IV. Intentional destruction of cultural heritage: cultural warfare, "cultural cleansing" and other violations of cultural rights

32. The UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage defines "intentional destruction" as "an act intended to destroy in whole or in part cultural heritage, thus compromising its integrity, in a manner which constitutes a violation of international law or an unjustifiable offence to the principles of humanity and dictates of public conscience". The qualification of intentional destruction may also be applied in cases of wilful neglect of cultural heritage either during armed conflicts or in times of peace, including with the intent of letting others destroy the cultural heritage in question, for example, through looting. The Special Rapporteur underscores the importance of also addressing the widespread destruction of cultural heritage engendered by development and modernization, a subject that cannot be addressed in this report owing to space constraints. She will continue to respond to this issue in future, including through communications.

A. Intentional destruction as a form of cultural warfare and cultural cleansing

33. This report pays particular attention to intentional destruction of cultural heritage carried out by States or non-States actors, whether in times of armed conflict or not, with a specific aim, e.g., attacking cultural diversity and cultural rights; erasing memory of current and past events, civilizations and peoples; erasing evidence of the presence of minorities, other peoples, philosophies, religions and

[18] UNESCO, "Reinforcement of UNESCO's action for the protection of culture and the promotion of cultural pluralism in the event of armed conflict" (38 C/49), 2 November 2015. See also the submission of Italy.

beliefs; or deliberately targeting or terrorizing individuals and groups on the basis of their cultural, ethnic or religious affiliation, or their ways of life and beliefs. These acts may be of different magnitudes, may be carried out systematically or sporadically, and may be part of a wider scheme to forcibly assimilate or deliberately kill a group of people.

34. The Special Rapporteur and her predecessor have been informed of the intentional destruction of cultural heritage sites, objects and monuments on which people rely to maintain, express and develop a diversity of beliefs and cultural practices, or to memorialize past events. Such destruction undermines numerous human rights, including the right to freedom from discrimination; the right to freedom of thought, conscience and religion; and the right to take part in cultural life, including the right to maintain and develop the cultural practices of one's choice, and to access cultural heritage including one's own history, and the right to freedom of artistic expression and creativity.

35. These acts of intentional destruction harm all, target freethinkers in majority groups and often disproportionately affect persons belonging to minorities. Aiming at homogenization of world views, they contribute to intolerance and tensions between people, and deprive all humanity of the rich diversity of heritage that should be transmitted to future generations. In some cases, cultural heritage sites that are testimonies to the friendship and interactions between various groups are particularly targeted.[19] In other cases, sites may be destroyed as part of a policy of removing from public space, symbols of past events, and of preventing the expression of narratives deviating from official discourses regarding such events.[20]

36. There are many examples where destruction is part of the "cultural engineering" practised by diverse extremists who, rather than preserve tradition, seek to radically transform it, erasing whatever does not accord with their vision. They seek to end traditions and erase memory, in order to create new historical narratives affording no alternative vision.

37. Well-known examples include cases raised by the predecessor of the Special Rapporteur and other human rights mechanisms, such as the destruction of Sufi religious and historic sites and desecration of graves in Libya in 2011 and 2012 (LYB 2/2012),[21] the destruction of cultural and religious sites, artefacts and manuscripts during the occupation of northern Mali in 2012 and early 2013, accompanied by a ban on music and restrictions on women's dress, with the deliberate and asserted intention to impose a world view (MLI 1/2012)[22] and the past and ongoing destruction of temples, monasteries, shrines and millenniums-old sites such as at Palmyra in the Syrian Arab Republic (see A/HRC/31/68, paras. 85-93). The Human Rights Council has also addressed the "systematic destruction" of the cultural heritage of the Palestinian people by Israel.[23]

38. The Special Rapporteur and her predecessor have also expressed concern regarding violations of the rights of Shia citizens in Bahrain, ranging from

[19] See, e.g., the submissions of Emma Loosley and Endangered Archaeology in the Middle East and North Africa (EAMENA).

[20] See joint allegation letter of 11 July 2014 on case No. BHR 9/2014, regarding the destruction of the Pearl Roundabout in Bahrain.

[21] The Special Rapporteur expresses her thanks to the State for its response (A/HRC/22/67).

[22] See also A/HRC/22/33, paras. 44-45; and A/HRC/25/72, para. 88.

[23] In its resolution 16/29 of 25 March 2011, in particular.

destruction of significant cultural and religious sites to changes made to the name of places and their marginalization in the context of the history of the country (BHR 6/2015);[24] the situation of the Baha'i in the Islamic Republic of Iran who have experienced repeated destruction of their cemeteries and places of cultural and religious significance (IRN 14/2016); and what appears to be the systematic destruction in Saudi Arabia of mosques, graves and shrines, houses and places of religious, historical and cultural significance deemed incompatible with the current Wahhabi interpretation of Islam (SAU 7/2015).[25]

39. Those attacks, which had a profound effect on the local populations, are just a few examples. There are also reports in various regions of attacks by States and non-State actors. In many submissions received by the Special Rapporteur, which concern sites in Iraq and the Syrian Arab Republic, as well as the larger region of the Middle East and Northern Africa, there are reports, for example, on the destruction of Coptic churches and monasteries in Egypt, Jewish sites in Tunisia and hundreds of shrines belonging to the Sufi sect of Islam across Northern Africa.[26]

40. Submissions also relate to other parts of the world. The Special Rapporteur notes with particular interest the concerns raised by Armenia, Azerbaijan, Georgia and Serbia (which she plans to visit in October 2016) and submissions alleging destruction of mosques and churches in India[27] and large-scale looting in Afghanistan.[28] She notes that she is available to address these issues in the future.

41. States, as well as a range of non-State actors, may bear responsibility for such acts. Sometimes actions of States and non-State actors affect the same site in succession, as has been alleged to be the case in Palmyra, for example.[29]

42. In the region of the Middle East and Northern Africa, in West Africa and beyond, many fundamentalist groups are reported to be actively involved in ideologically motivated destruction, which is often openly proclaimed, and for which attempts at justification are made on religious grounds. These groups include Da'esh, Al-Qaida (and its various branches and affiliates), Jabhat Al-Nusra, Jabhat Ansar al-Din, Jaish al-Fateh and Boko Haram, in addition to numerous civilian militias.[30] Some of the States in the regions witnessing acts of intentional destruction, which have been brought to the attention of the Special Rapporteur, themselves espouse fundamentalist ideologies. Putting an end to these forms of destruction requires tackling the fundamentalist ideology motivating them, in accordance with international human rights standards, in particular through education on the subjects of cultural rights, diversity and heritage.

---

[24] The Special Rapporteur takes note of the State's response (A/HRC/32/53) and is available to further engage with it on this matter.

[25] The Special Rapporteur hopes to receive, in a timely manner, a more substantial response from the authorities (A/HRC/31/79).

[26] Submission of EAMENA. For a regional overview, see Heghnar Watenpaugh, "Cultural heritage and the Arab Spring: war over culture, culture of war and culture war", *International Journal of Islamic Architecture*, vol. 5, No. 2 (2016), pp. 245-263.

[27] Submission of Ram Puniyani.

[28] Submission of United Nations Assistance Mission in Afghanistan (UNAMA)-Office of the United Nations High Commissioner for Human Rights Afghanistan.

[29] The Special Rapporteur notes the submissions of EAMENA and the Russian Federation. See also A/HRC/25/65, para. 116.

[30] Submission of EAMENA.

43. The Special Rapporteur recalls the grievous history of destruction of diverse forms of indigenous cultural heritage in many parts of the world as a systematic part of, inter alia, colonialism or nationalist policies in post-colonial States. She agrees with the determination in the final report of the Truth and Reconciliation Commission of Canada[31] that such policies can amount to cultural genocide. That history has shaped international law itself, as the notion of cultural genocide was excluded from the Genocide Convention owing to opposition from a number of settler colonial and Western States vulnerable to the accusation that they had historically engaged in such practices vis-à-vis indigenous peoples. The totality of these policies have had long-lasting effects on the human rights of many indigenous peoples in diverse geographical contexts and have impoverished the heritage of humanity.

44. Physical violence need not be used to destroy cultural heritage, as attested, for example, by the systematic changing of place names in the northern part of Cyprus by Turkish Cypriot authorities.[32] The Special Rapporteur also notes allegations that in Israel, archaeological excavations, research and preservation are sometimes used to entrench Israeli sovereignty over disputed areas in East Jerusalem and the West Bank and have become an instrument for highlighting only one national historical narrative.[33]

45. Acts such as iconoclasm and biblioclasm have a long history in all regions of the world, whether perpetrated during wars, revolutions or waves of repression. However, in the early twenty-first century, a new wave of deliberate destruction is being recorded and displayed for all the world to see, the impact magnified by widespread distribution of the images. Such acts are often openly proclaimed and justified by their perpetrators. This represents one form of cultural warfare against populations and humanity as a whole, and a form that the Special Rapporteur condemns in the strongest terms. She shares the view of UNESCO that these acts of intentional destruction sometimes constitute "cultural cleansing". They take the terrorization of a population to a heightened level through an attack on its very history and pose an urgent challenge to cultural rights, which requires rapid and thoughtful international response.

46. The preamble of the 2003 UNESCO Declaration stresses that cultural heritage is an important component of cultural identity and of social cohesion "so that its intentional destruction may have adverse consequences (for) human dignity and human rights". In recent cases, as in those involving their historical antecedents, the objects in question have clearly been targeted not in spite of the prohibitions on attacking cultural heritage and notwithstanding the value of the objects in question, but precisely because of the existence of that value and those norms.

---

[31] See the summary of the final report of the Commission, entitled *Honoring the Truth, Reconciling for the Future*, 2015. Available at http://nctr.ca/reports.php.

[32] See preliminary conclusions and observations by the Special Rapporteur at the end of her visit to Cyprus, 24 May-2 June 2016 (www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20048&LangID=E).

[33] Submission of Emek Shaveh. Note also that the Special Rapporteur on freedom of religion or belief reported in 2008 that "(i)n the Occupied Palestinian Territory, there have been ... problems of safe access to religious sites revered by Jews" (A/HRC/10/8/Add.2, para. 35).

B. Intentional destruction in armed conflict

47. There are many other alleged motivations for destruction of cultural heritage and other forms taken by that destruction, which the Special Rapporteur intends to address during her mandate, including so-called collateral damage in armed conflict, and indiscriminate attacks which do not distinguish between legitimate military targets and civilian infrastructure, as well as deliberate targeting and acts perpetrated based on an overly broad definition of "military necessity".

48. Armed conflicts and political instability also open the door to looting whether committed by individuals or organized groups. While it is sometimes difficult to distinguish between overlapping practices of ideological destruction and those of looting for economic reasons, both sets of practices must be tackled, including in countries where markets for looted artefacts are located.

49. One recent example of conflict-related destruction about which the Special Rapporteur has raised urgent concerns involves Saudi Arabia: as of May 2016, the air strikes of the military coalition led by Saudi Arabia in Yemen had caused the destruction of over 500 schools, 39 universities and vocational institutes and over 50 sites of religious, historic and cultural significance. None of these sites, except for one, had been identified as military objectives by the coalition and no justification of military necessity was articulated to support their destruction (SAU 3/2016).[34] Further, the Office of the United Nations High Commissioner for Human Rights received reports that the Popular Committees affiliated with the Houthis had launched attacks that damaged public schools, mosques and Qur'anic schools (A/HRC/30/31, para. 33).

50. The Independent International Commission of Inquiry on the Syrian Arab Republic has found that historic monuments are being damaged and destroyed across that country. No party to the conflict is abiding by its obligation to respect cultural property and to avoid causing damage to that property within the context of military operations. Both government forces and anti-government armed groups have rendered sites open to attack by placing military objectives in them.[35]

51. Submissions received also provide additional examples of harm to cultural heritage inflicted in conflict. For example, the conversion of the archaeological site at Babylon in Iraq into a military base by forces of the United States of America in 2003, which continued to be maintained as such by Polish forces up until 2004, caused significant damage.[36] It is also alleged that in Diyarbakir, Turkey, armed clashes have caused serious damage to historical buildings.[37]

[34] The Government has requested an extension of the delay granted for its response. See also A/HRC/30/31, para. 30.

[35] See A/HRC/23/58, para. 116, and subsequent reports of the Commission.

[36] Submission of Christiane Johannot-Gradis.

[37] Submission of the Diyarbakir Metropolitan Municipality.

V. A human rights approach to the intentional destruction of cultural heritage

A. The importance of a human rights approach

52. The intentional destruction of cultural heritage, and the responses to it, have many human rights-related implications. Except in a few important initiatives,[38] and as highlighted by the joint statement made at the thirty-first session of the Human Rights Council and new strategies deployed at UNESCO, the destruction of cultural heritage is generally still not addressed by the international community as a question of human rights.[39] This situation must change. Most often, intentional destruction of cultural heritage constitutes a violation of human rights and may be accompanied by other grave human rights violations. It is crucial that human rights mechanisms address this issue as a matter of priority. The Special Rapporteur sketches the contours of a human rights approach below.

53. The human rights approach to cultural heritage obliges one to go beyond preserving and safeguarding an object or a manifestation in itself to take into account the rights of individuals and groups in relation to such object or manifestation and to connect cultural heritage with its source of production (see A/HRC/17/38 and Corr.1, para. 2). It is impossible to separate a people's cultural heritage from the people itself and that people's rights. The importance of having access to one's own cultural heritage and to that of others has been emphasized by the Committee on Economic, Social and Cultural Rights in its general comment No. 21. A human rights approach must also emphasize the many living connections between tangible and intangible heritage, and focus on the ways in which attacks on each are interrelated.

54. A human rights approach emphasizes accountability and the combating of impunity. The Special Rapporteur welcomed the decision of the Office of the Prosecutor of the International Criminal Court to charge the destruction of cultural and religious sites as a stand-alone war crime for the first time[40] in the case of *Prosecutor v. Ahmad Al Faqi Al Mahdi*.[41] Commenting on this case, Richard Goldstone, a former judge of the Constitutional Court of South Africa, has noted that "(I)t is to the credit of the Chief Prosecutor of the ICC that these crimes have been prioritised by her office", so as "to ... bring to justice those alleged to have been complicit in the perpetration of these enormous affronts to the dignity and culture of so many human beings".[42] The Special Rapporteur hopes to witness

[38] Note, for example, International Union for Conservation of Nature (IUCN), International Council on Monuments and Sites (ICOMOS) and International Centre for Study of the Preservation and Restoration of Cultural Property (ICCROM), "World heritage and rights-based approaches", report from Workshop in Oslo, 1-3 April 2014. Available online.

[39] See, also, the memorandum submitted by Elsa Stamatopoulou to the Special Rapporteur in the field of cultural rights, 12 December 2015.

[40] See the press release of 4 March 2016 entitled "The destruction of cultural heritage is a violation of human rights". Available at www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=17151&LangID=E.

[41] *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Situation in the Republic of Mali, Public Court Records: Pre-Trial Chamber I. See www.icc-cpi.int for all related documents.

[42] Richard Goldstone, "The war crime of destroying cultural property", *International Judicial Monitor*, 2016.

similar prosecutions in future, and reminds States of the vital need to collect and preserve evidence of any such crimes, including in conflict and post-conflict situations.

55. The focus of a human rights approach to prevention must be, in particular, on education on the importance of cultural heritage and cultural rights and a teaching of history that stresses its complexity (see A/68/296, para. 88 (a)). For cultural heritage to be safeguarded over the long term, young people must be positively engaged in this process.

56. Cultural heritage should build bridges, not walls. It can be a means of bringing people together. Just as the intentional destruction of cultural heritage has a devastating impact on cultural rights, protecting cultural heritage can have a positive impact on morale and rights in situations of conflict or repression. In this regard, the motto of the National Museum of Afghanistan, where some 2,750 pieces were destroyed by the Taliban in 2001, is the following: "A nation stays alive when its culture stays alive."

57. Acts of deliberate destruction must be addressed within the context of holistic strategies for the promotion of human rights and peacebuilding. Peacebuilding processes, as well as processes of truth and reconciliation, should include the issue of cultural heritage (A/HRC/17/38 and Corr.1, para. 15).

58. Adopting a human rights approach entails consulting the people who have particular connections with heritage, including for the purpose of understanding and incorporating the multiplicity of interpretations of that heritage, and determining whether (or not) they wish to rebuild, reconstruct and re-establish such a heritage and if so, how. Such consultations must include marginalized groups; further, women must be fully involved.[43] Consultations must aim at obtaining free, prior and informed consent, in particular where the rights of indigenous peoples are at stake.

B. A human rights approach to cultural heritage in armed conflict or situations of occupation

59. While greatly valuing the role of international humanitarian law and the work of the International Committee of the Red Cross, the Special Rapporteur considers that a human rights approach to armed conflict is an important complement to approaches on international humanitarian law.[44]

60. There is no provision on derogation in the International Covenant on Economic, Social and Cultural Rights and the Committee on Economic, Social and Cultural Rights has confirmed that the Covenant applies in times of conflict or emergency (E/2015/59, paras. 12-15). The Committee has noted "that even during armed conflict, fundamental human rights must be respected and that basic

[43] For a discussion of this point, emphasizing the role of the Internet, see the submission of the Association for Progressive Communications.

[44] Karima Bennoune, "Toward a human rights approach to armed conflict: Iraq 2003", *U.C. Davis Journal of International Law and Policy*, vol. 11 (2004), p. 172. On the need for such an approach, see Frédéric Mégret, "What is the 'specific evil' of aggression?", in *The Crime of Aggression: A Commentary*, Claus Kreß and Stefan Barriga, eds. (Cambridge, United Kingdom, Cambridge University Press, 2016), sect. 51.3.3, "The deference of international human rights law", pp.1424-1428.

economic, social and cultural rights as part of the minimum standards of human rights are guaranteed under customary international law".[45] It has specifically considered that such standards apply in occupied territory, and wherever the State party exercises "effective control".[46] The Committee has also noted (within the context of the right to food) that it is "of the utmost importance ... for States to have control over the impact of their policies within and outside their territory".[47] Additionally, the Committee has required States parties to do everything in their power to improve enjoyment of economic, social and cultural rights during armed conflict. The International Court of Justice has confirmed the applicability of international human rights law to situations of military occupation and noted that the occupying Power is bound, inter alia, by the provisions of the International Covenant on Economic, Social and Cultural Rights.[48]

61. International humanitarian law and human rights law provide complementary and mutually reinforcing protection of economic, social and cultural rights in situations of conflict. In addition, "(t)he application of human rights law, and in particular the International Covenant on Economic, Social and Cultural Rights, to conflict situations, helps in clarifying the content" of the relevant humanitarian norms (E/2015/59, para. 68). It also supplements those norms, as in the case of intangible cultural heritage which is not adequately covered by international humanitarian law. The Special Rapporteur takes note of the view of some experts on international humanitarian law that a teleological approach to the question of *lex specialis* suggests that the rule to be applied should be the one that best responds to the needs and specificity of the context, and is also the fairest under the circumstances. Sometimes human rights law should take precedence, because "this allows for heightened protection of cultural heritage in armed conflict, in particular of its intangible dimension".[49]

62. Relevant norms of international humanitarian law should be fully and rigorously implemented. In addition, the Special Rapporteur advocates a human rights approach to cultural heritage protection in armed conflict, both as a means of facilitating an understanding of those norms and as a complement to them. This would reframe a number of key issues, as follows.

63. Concerns have been expressed regarding the impact on cultural heritage of the way in which the military necessity exception, including in article 4 (2) of the 1954 Hague Convention and article 6 of the Second Protocol thereto, is interpreted.[50] This exception, in its various permutations, limits the requirement to protect heritage, to refrain either from "acts of hostility" against it or from using it in ways likely to subject it to such acts. The military necessity exception is undoubtedly subject to

[45] See E/2002/22-E/C.12/2001/17, chap. IV, para. 703 (Israel).

[46] Concluding observations of the Committee: Israel (E/C.12/1/Add.90), para. 31.

[47] E/1998/22, para. 478.

[48] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J Reports 2004*, p. 136.

[49] Christiane Johannot-Gradis, *Le patrimoine culturel matériel et immatériel: quelle protection en cas de conflit armé?* (Geneva, Schulthess, 2013), p. 175. See also Marco Sassòli, "The role of human rights and international humanitarian law in new types of armed conflicts", in *International Human Rights and Humanitarian Law*, Orna Ben-Naftali, ed. (Oxford, Oxford University Press, 2011), chap. 3.

[50] The prohibitions on theft, pillage, vandalism, and misappropriation and requisition of cultural property are not subject to this exception, but rather are absolute.

abuse. It was inserted to encourage ratifications and for the sake of practicality, with the understanding that only "imperative" military necessity was sufficient to indicate a high threshold.[51] No further guidance is afforded on how it should be interpreted on the terms of the Convention itself. The Second Protocol alters this concept by requiring that imperative necessity apply only when the cultural property in question has been transformed into a military objective and when "there is no feasible alternative available to obtain a similar military advantage". Experts have argued that this provision should be understood in practical terms as a complement to article 4 of the Convention itself, and could become customary international law.[52]

64. Given the threat of irreversible and grave impact on the enjoyment of cultural rights, parties to conflicts as well as national and international criminal courts should recognize any military necessity exception to the ban on targeting cultural property or using it in ways that put it at risk as being indeed highly exceptional and as not constituting a readily available discretionary loophole. A broadly interpreted exception swallows a rule. This means that (a) it is essential for the protection of cultural rights that States ratify the Second Protocol, (b) even non-ratifying States should consider applying the standard it contains and (c) this standard should itself be interpreted narrowly. Such an interpretation is especially important with regard to such concepts as "no feasible alternative", with cultural rights always to be taken into consideration, as they are an integral part of fundamental human rights. Not all military advantages, and certainly not those that are not related to preserving human life, should be deemed as outweighing the imperative of protection of cultural heritage.

65. Article 7 of the Second Protocol underscores the importance of proportionality, requiring that a Party must "refrain from deciding to launch an attack which may be expected to cause incidental damage ... which would be excessive in relation to the concrete and direct military advantage anticipated". Carrying out attacks on legitimate targets under the laws of war when those attacks pose significant threats to important cultural sites should also be greatly disfavoured even for non-parties to this Protocol, and considered in light not only of the laws of war but of their impact on cultural rights. Close scrutiny of all military decisions resulting in destruction of cultural heritage, and public accountability for those decisions, are essential. Naming and shaming with regard to all instances in which cultural heritage is destroyed in armed conflict in deliberate, indiscriminate or disproportionate attacks, or in attacks that could have been avoided, are de rigueur. These are crimes against the heritage of humanity and gross violations of the cultural rights of current and future generations, which cannot be undone.

66. Moreover, if States or other actors do respect international humanitarian norms in specific actions, yet the cumulative effect of those actions during a conflict is to destroy a significant number of cultural heritage sites in a particular country, or especially important sites, then such actions, while potentially legal under international humanitarian law, still raise grave concerns with regard to cultural rights and may constitute violations of human rights. International humanitarian law

[51] Gerstenblith, "The destruction of cultural heritage", pp. 367-370. See footnote 18.

[52] Jiří Toman, *Cultural Property in War: Improvement in Protection — Commentary on the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict*, World Heritage Series (Paris, UNESCO, 2009), p. 96.

does not obviate human rights obligations. Any other result would eviscerate human rights protection at the time that it is most needed and could sanitize the massive destruction of cultural heritage. This means that States should give careful, principled policy consideration to impacts on cultural heritage and cultural rights when contemplating or engaging in conflicts, which would entail their advancing beyond the view that operational and technical decisions in this regard can be made on a case-by-case basis alone. This would require planning and expertise while demonstrating true commitment to culture.

67. The Special Rapporteur understands that as military commanders may need to act to save the lives of their troops or the lives of civilians, this may constrain their choices, since the protection of human beings is the most fundamental human rights concern of all. However, while the showing of respect for the cultural heritage of the population constitutes first and foremost a positive contribution to human rights, it can also help ensure the protection of troops in the long term by ameliorating relationships with local populations and keeping to a minimum the anger directed against them, especially in situations that result in occupation.[53]

C. Defenders of cultural heritage

68. A critical dimension of the human rights approach to cultural heritage, which currently receives insufficient attention, is the protection of the defenders of cultural heritage who are at risk. They include cultural heritage professionals, such as contemporary figures like Khaled al-Asaad, the Syrian archaeologist who died defending Palmyra in August 2015, along with many others who today labour in obscurity and in conditions of danger, as well as ordinary people like the women in Northern Africa whom the Special Rapporteur observed sleeping inside a mausoleum that had been attacked in order to safeguard it.

69. The Special Rapporteur salutes these "heritage heroes", as they have been called by UNESCO, and pays particular tribute to all those who have laid down their lives to preserve humanity's cultural heritage. The persons commemorated below are but a few of those about whom she has received reports:

- Anas Radwan, an architect based in Aleppo, who, in 2013, established and led the Syrian Association for Preservation of Archaeology and Heritage team, was killed in April 2014, reportedly by a barrel bomb employed by the Government, while documenting damage to monuments in the Old City of Aleppo.[54]
- Samira Saleh al-Naimi, an Iraqi lawyer, was abducted and tortured by Da'esh in September 2014, shortly after having posted denunciations on Facebook of the group's destructions of religious and cultural sites in Mosul.[55]

[53] Peter Stone, "The challenge of protecting heritage in times of armed conflict", *MUSEUM International*, vol. 68, Nos. 1-4 (2016).

[54] Tim Slade, *The Destruction of Memory* (Vast Productions, 2016), film based on Bevan, *The Destruction of Memory: Architecture at War*. See footnote 16.

[55] Based on United Nations Iraq, "UN envoy condemns public execution of human rights lawyer, Ms. Sameera Al-Nuaimy", 25 September 2014. Available at www.uniraq.org/index.php?option=com_k2&view=item&id=2674:un-envoy-condemns-public-execution-of-human-rights-lawyer-ms-sameera-al-nuaimy&Itemid=605&lang=en.

- Abdulaziz al-Jobouri, head of Antiquities Security in the Province of Nineveh, who was responsible for the protection of numerous ancient sites, was executed by Da'esh on 16 October 2014. The mosque that he had built in his village was subsequently bulldozed.

- Mustafa Ali Ahmad Salih and Asrawi Kamil Gad Qalayni, guards at the Dayr al-Barsha site in Egypt, were killed on 20 February 2016 by a gang of tomb robbers as they attempted to stop the looting of the tomb of the last ruler of the First Intermediate Period, Djehuti-Nakht.[56]

- Berta Cáceres, noted defender of indigenous rights and coordinator of the Civic Council of Popular and Indigenous Organizations of Honduras, who had long campaigned to protect indigenous heritage, including natural heritage, was gunned down in Honduras on 3 March 2016.[57]

70. We must also commemorate those who fell earlier. Aida Buturovic, a librarian, was killed by a shell burst in August 1992 as she returned home after working with others to save the rare books and manuscripts in National and University Library of Sarajevo on the day it was shelled. Expert bibliographer András Riedlmayer made the following comment: "People sometimes ask me why I am worried about books when so many human beings have died and suffered. My answer is to point to Aida Buturovic, because the two are inseparable."[58]

71. These are only a few of the cultural heritage heroes who have fallen. The Special Rapporteur notes that she has been unable to locate any source of comprehensive records of the threats made to, and human rights abuses perpetrated against, cultural heritage defenders. The greatest memorial that members of the international community could raise to those who died defending heritage would be a continuation of their work and the provision of support to those still on the front lines. We must not wait until we are mourning their deaths to rally to the cause of cultural heritage defenders at risk.

72. The Special Rapporteur has become aware of small initiatives aimed towards supporting local cultural heritage professionals or, when the risk becomes too great, arranging for their evacuation and thereby enabling them to work in institutions elsewhere. Those initiatives could have exerted a significant impact but were hampered by the inability to obtain funds, notwithstanding the international community's professions of outrage at heritage destruction. Such small, potentially effective initiatives are to be favoured over mere window dressing.

73. Threats to cultural heritage defenders also pose a grave risk of the loss of their expertise. Further, conflict situations and political turmoil frequently result in

[56] Based on Dayr al-Barsha Project, "GoFundMe campaign for the antiquities guards of Dayr al-Barsha", 22 February 2016. Available at www.dayralbarsha.com/node/301; and correspondence with the Dayr al-Barsha Project, directed by the Department of Egyptology, University of Leuven, Leuven, Belgium.

[57] Office of the United Nations High Commissioner for Human Rights, "Berta Cáceres' murder: UN experts renew call to Honduras to end impunity". Available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19805&LangID=E.

[58] Ken Gewertz, "Librarians Riedlmayer and Spurr Honored for Work in Sarajevo", Harvard Gazette, 31 October 1996. Available at http://news.harvard.edu/gazette/1996/10.31/LibrariansRiedl.html. See also András Riedlmayer, "Crimes of war, crimes of peace: destruction of libraries during and after the Balkan wars of the 1990s", *Library Trends*, vol. 56, No. 1 (2007), pp.107-132.

restrictions on the travel of those working to protect heritage. As a consequence, their access to necessary guidance and support is denied and their access to cultural heritage is limited.

74. Article 15 of the 1954 Hague Convention provides that personnel engaged in the protection of cultural heritage are to be respected and must be allowed to carry on their work if they and the cultural property for which they are responsible fall into the hands of an opposing State party. In accordance with article 17 (2) (c) of the Convention, the distinctive emblem of cultural property, the Blue Shield, may be employed as a means of identification of such persons.

75. In many circumstances, defenders of cultural heritage acting in accordance with international human rights norms should be recognized as cultural rights defenders, and thus as human rights defenders. In line with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, States should recognize the legitimacy of their work, address the threats and risks that they face and guarantee them, in their defence of human rights, a safe, enabling environment.

VI. Conclusions and recommendations

76. Today, in our collective role as custodians of the past achievements of humanity, we are faced with a stark choice. Will we engage with cultural heritage in its diversity in such a way as to allow cultural rights to flourish and will we protect it, teach youth about it, learn from it and from the history of its destruction, and make use of heritage and its reconstruction to understand ourselves and find solutions to the grave problems that we face? Will we be up to the challenge of protecting the heritage of humanity? If the answer is no, the rights of current generations will be violated, and we will incur the scorn of future generations. Would we not prefer to bequeath a richer legacy?

77. The intentional destruction of cultural heritage is a human rights issue. The approach to stopping it needs to be a holistic one, encompassing all regions, focused on both prevention and punishment, and targeting acts committed by both State and non-State actors, in conflict and non-conflict situations. We must not only respond urgently, but also take the long view.

78. To effectively prevent and stop intentional destruction of cultural heritage as a violation of human rights, the Special Rapporteur recommends that States:

(a) Respect and protect tangible and intangible cultural heritage, both nationally and transnationally;

(b) Ratify the core cultural heritage conventions, including the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and the 1954 and 1999 Protocols thereto, and other relevant standards, such as the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol thereto, the Rome Statute of the International Criminal Court and the 1977 Protocols Additional to the Geneva Conventions of 1949; and urgently enact implementing legislation so as to enable full implementation of those conventions;

(c) Take appropriate legislative, administrative, educational and technical measures to prevent, avert, stop and suppress intentional destruction of cultural heritage. In this regard, States should:

(i) Prepare in peacetime for any possible threat to cultural heritage in time of war, including through documenting the tangible and intangible cultural heritage within their jurisdiction, as well as employing digital technologies and new media, wherever feasible;

(ii) Allocate sufficient budgetary resources, at both the national and international levels, to the protection of cultural heritage, including through making their full contributions to the United Nations Educational, Scientific and Cultural Organization (UNESCO);

(iii) Provide international technical assistance to facilitate prevention of the intentional destruction of cultural heritage;

(iv) Implement educational programmes on the importance of the cultural heritage and cultural rights of all, especially for young people, and review existing curricula with a view to ensuring that they reflect the culture and heritage of all, as recommended by the Committee on Economic, Social and Cultural Rights;

(d) Train fully the personnel of all relevant agencies, inter alia, military forces and customs and law enforcement officials, including firefighters and police, in the application of all relevant rules concerning the protection of and respect for cultural rights and cultural heritage, including in armed conflict;

(e) Take all steps necessary to facilitate prosecution of those responsible for intentional destruction of cultural heritage, looting and illicit trafficking in cultural objects at the national or the international level, in accordance with relevant international standards; and to this end, collect and preserve evidence needed for such prosecution;

(f) Promote truth processes, involving all relevant stakeholders, to determine the history of, and enable fact-finding with regard to, the destruction of the cultural heritage of all; and include cultural heritage and cultural rights in any transitional justice or truth and reconciliation processes;

(g) Engage in assessment and emergency stabilization efforts with regard to tangible cultural heritage that has been subject to destruction or damage, to the extent feasible, while armed conflicts are ongoing;

(h) Subsequently, before proceeding with any form of reconstruction or long-term preservation efforts, conduct thorough consultations among local, national and international stakeholders, including technical experts and relevant populations, taking into consideration the need to memorialize conflicts within the context of cultural heritage sites;

(i) Recognize the role that cultural rights and cultural heritage preservation can play in the integration and rehabilitation of refugees and displaced persons after trauma, and in giving refugees a place to which to return, as well as their importance in post-conflict stabilization and reconciliation; and ensure the cultural rights of refugees and displaced persons, including women, and especially those from locations where cultural heritage

has been destroyed, including their right to take part in cultural life and to enjoy their intangible cultural heritage;

(j) Also recognize that parties to conflicts as well as international and national criminal courts should interpret narrowly any military necessity exception to the ban on targeting cultural property, taking into consideration the impact on cultural rights; and should subject to close scrutiny all military decisions resulting in the destruction of or damage to cultural heritage, while acknowledging that public accountability for those decisions is essential;

(k) Respect the rights of cultural heritage professionals and other defenders of cultural heritage on the front lines of the struggle against intentional destruction; and ensure their safety and security, while recognizing that everyone has a duty to respect the rights of cultural heritage defenders and anyone alleged to have harmed them must be brought to justice in accordance with international standards;

(l) In accordance with Human Rights Council resolution 31/32 on protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights, respect, protect, promote and facilitate the work of those defending cultural rights, recognizing that those who work to promote access to cultural heritage, and to preserve and safeguard it, in accordance with international human rights norms, should be considered human rights defenders;

(m) Work at the national and international levels to provide cultural heritage professionals and other cultural heritage defenders with the conditions necessary to complete their work, including material and technical assistance; and preserve and strengthen institutions designed to preserve cultural heritage, including in situations of conflict;

(n) Grant asylum to at-risk cultural heritage professionals and defenders when necessary; and ensure that displaced cultural heritage professionals are able to continue their professional work and training in exile and to take part in the protection and reconstruction of their country's cultural heritage;

(o) Expedite the issuance of visas and assist scholars and heritage professionals based in conflict areas with regard to travel so as to enable them to sustain the knowledge of their cultural resources and to access best practice, advice and support;

(p) Tackle, in accordance with international standards, extremist and fundamentalist ideologies, sectarianism and discriminatory attitudes towards, inter alia, those with different views, minorities, indigenous peoples and women, which often lead to cultural cleansing in the form of cultural heritage destruction, while ensuring that critical strategies in this regard include humanist education, respect for human rights and promotion of tolerance and pluralism;

(q) Adopt a fully gender-sensitive approach to the protection of cultural heritage, including by recognizing the work of women defenders of cultural heritage, promoting inclusion of women cultural heritage experts in relevant national and international forums and institutions, and addressing the

particular challenges faced by women in accessing cultural heritage without discrimination.

79. **The Special Rapporteur recommends that States, experts and international and non-governmental organizations:**

(a) **Consider how to enhance the application to non-State actors of existing international legal standards regarding the prohibition of intentional destruction of cultural heritage and the obligation to respect cultural rights;**

(b) **Also consider the creation of a mechanism for systematically collecting, analysing and distributing information on at-risk cultural heritage defenders around the world;**

(c) **Recognize the protection of cultural heritage and cultural rights as a critical component of humanitarian assistance, including in conflicts;**

(d) **Investigate the use of funds derived from looting and the illicit traffic of cultural objects for the financing of terrorism and consider requiring increased due diligence with regard to the sale of cultural objects from at-risk regions;**

(e) **Systematically incorporate cultural awareness; safeguarding, restoration and memorialization of cultural heritage; and the respect and protection of cultural rights, in the mandate of peacekeeping missions, in peacebuilding policies and initiatives and in post-conflict reconciliation;**

(f) **Promote and provide resources for international exchange of best practices regarding protection of cultural heritage and the right to access and enjoy it.**

Further, the Special Rapporteur recommends that civil society submit communications concerning both individual and systematic violations of human rights through the destruction of cultural heritage to the Committee on Economic, Social and Cultural Rights under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.